

IN THE COURT OF COMMON PLEAS  
OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;  
AL CLEMENS, member of the Board of Trustees  
of Pennsylvania State University; and  
WILLIAM KENNEY and JOSEPH V. ("JAY")  
PATERNO, former football coaches at  
Pennsylvania State University,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION ("NCAA");

MARK EMMERT, individually and as President  
of the NCAA; and

EDWARD RAY, individually and as former  
Chairman of the Executive Committee of the  
NCAA,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,  
Nominal Defendant.

) CIVIL DIVISION  
)  
)

) Docket No. 2013-2082  
)  
)

) **JOINDER IN PEPPER**  
) **HAMILTON LLP'S MOTION**  
) **FOR STAY PENDING**  
) **APPEAL AND FOR**  
) **PROTECTIVE ORDER**  
) **WITH RESPECT TO**  
) **DOCUMENTS AND**  
) **INFORMATION**  
) **PROTECTED BY THE**  
) **ATTORNEY-CLIENT**  
) **PRIVILEGE OR THE**  
) **ATTORNEY WORK**  
) **PRODUCT DOCTRINE**

) Filed on Behalf of:  
) The Pennsylvania State  
) University

) Counsel of record for this party:

) Daniel I. Booker, Esquire  
) PA I.D. No. 10319  
) Jack B. Cobetto, Esquire  
) PA I.D. No. 53444  
) Donna M. Doblack, Esquire  
) PA I.D. No. 75394  
) William J. Sheridan, Esquire  
) PA I.D. No. 206718  
) REED SMITH LLP  
) Firm #234  
) 225 Fifth Avenue  
) Pittsburgh, PA 15222  
) (412) 288-3131  
) (412) 288-3063 (fax)

) Michael T. Scott, Esquire  
) PA I.D. No. 23882  
) REED SMITH LLP  
) Three Logan Square  
) Suite 3100  
) 1717 Arch Street  
) Philadelphia, PA 19103  
) (215) 851-8100

copy  
2014 OCT 22 PM 1:54  
DEORA C. JIMMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

) (215) 851-1420 (fax)  
)  
) Joseph P. Green, Esquire  
) PA I.D. No. 19238  
) LEE GREEN & REITER INC.  
) 115 East High Street  
) Lock Drawer 179  
) Bellefonte, PA 16823-0179  
) (814) 355-4769  
) (814) 355-5024 (fax)

**IN THE COURT OF COMMON PLEAS  
OF CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO;  
AL CLEMENS, member of the Board of Trustees  
of Pennsylvania State University; and  
WILLIAM KENNEY and JOSEPH V. (“JAY”)  
PATERNO, former football coaches at  
Pennsylvania State University;

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION (“NCAA”);  
MARK EMMERT, individually and as President  
of the NCAA; and  
EDWARD RAY, individually and as former  
Chairman of the Executive Committee of the  
NCAA,

Defendants,

and

THE PENNSYLVANIA STATE UNIVERSITY,  
Nominal Defendant.

CIVIL DIVISION

Docket No. 2013-2082

DEBRA C. JIMEL  
PROTHONOTARY  
CENTRE COUNTY, PA.

2014 OCT 22 PM 1:54

COPY

**JOINDER IN PEPPER HAMILTON LLP’S MOTION FOR STAY PENDING APPEAL  
AND FOR PROTECTIVE ORDER WITH RESPECT TO DOCUMENTS AND  
INFORMATION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR THE  
ATTORNEY WORK PRODUCT DOCTRINE**

The Pennsylvania State University (“Penn State” or “the University”) hereby respectfully advises the Court that it joins in the Motion for Stay Pending Appeal and for Protective Order with respect to documents and information protected by the attorney-client privilege and/or the attorney work product doctrine that Pepper Hamilton LLP filed on October 13, 2014 (the “Motion”). Penn State further asks the Court to also issue a protective order and a commensurately limited stay of the discovery directed toward the University pending the resolution of the University’s appeal.

As this Court is aware, Penn State has appealed those portions of the Court's September 11, 2014 Order, that overruled Penn State's objections to the issuance of a subpoena to Pepper Hamilton based on the attorney-client privilege and the attorney work product doctrine. As Pepper Hamilton aptly notes in the Memorandum it filed in support of its Motion, unless the Court stays that aspect of its Order pending the outcome of Penn State's appeal, both Pepper Hamilton and Penn State will lose the ability to argue that documents and information are protected by the attorney-client privilege and/or the attorney work product doctrine. However, the need to *protect* the sanctity of such materials pending appellate review is the very reason why the courts have concluded that orders overruling privilege claims fall into the small category of collateral orders that are immediately appealable. *See Berkyheiser v. A-Plus Investigations, Inc.*, No. 2910 EDA 2006, No. 2911 EDA 2006, 2007 Pa. Super. LEXIS 3869, \*17 (Pa. Super. Ct. Nov. 16, 2007); *Carbis Walker, LLP v. Hill, Barth & King, LLC*, 930 A.2d 573, 577 (Pa. Super. Ct. 2007); *T.M. v. Elwyn, Inc.*, 950 A.2d 1050, 1058 (Pa. Super. 2007). The rationale of those cases provides strong support for the issuance of a limited stay of discovery and the entry of a limited protective order with respect to the University's claims of the attorney-client privilege and the attorney work product doctrine.

Penn State emphasizes that it is *not* seeking a stay of the litigation or even a stay of all discovery pending appeal. Quite to the contrary, other than with respect to the limited issues it has appealed to the Superior Court, Penn State is complying fully with the Order. Specifically, Penn State has produced and is continuing to produce documents – other than documents it contends are protected from disclosure by the attorney-client privilege or the attorney work

product doctrine and documents subject to other objections that have not been brought before or adjudicated by the Court – to the plaintiffs.<sup>1</sup>

For all of these reasons, Penn State respectfully joins in Pepper Hamilton’s Motion, and asks the Court to also enter the Order that is attached hereto.

Respectfully submitted,



---

Daniel I. Booker (10319)  
dbooker@reedsmith.com  
Jack B. Cobetto (53444)  
jcobetto@reedsmith.com  
Donna M. Doblack (75394)  
ddoblack@reedsmith.com  
William J. Sheridan (206718)  
wsheridan@reedsmith.com  
REED SMITH LLP  
225 Fifth Avenue  
Pittsburgh, PA 15222  
(412) 288-3131  
(412) 288-3063 (fax)

Michael T. Scott (23882)  
mScott@reedsmith.com  
REED SMITH LLP  
Three Logan Square  
Suite 3100  
1717 Arch Street  
Philadelphia, PA 19103  
(215) 851-8100  
(215) 851-1420 (fax)

Joseph P. Green (19238)  
jgreen@lmgrlaw.com  
LEE GREEN & REITER INC.  
115 East High Street  
Lock Drawer 179  
Bellefonte, PA 16823-0179  
(814) 355-4769  
(814) 355-5024 (fax)

---

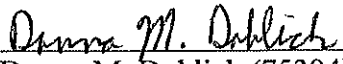
<sup>1</sup> The University notes that Pepper Hamilton’s Motion seeks similarly limited relief.

*Attorneys for  
The Pennsylvania State University*

**IN THE COURT OF COMMON PLEAS  
OF CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO;	)	CIVIL DIVISION
AL CLEMENS, member of the Board of Trustees	)	
of Pennsylvania State University; and	)	Docket No. 2013-2082
	)	
WILLIAM KENNEY and JOSEPH V. ("JAY")	)	
PATERNO, former football coaches at	)	
Pennsylvania State University,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
NATIONAL COLLEGIATE ATHLETIC	)	
ASSOCIATION ("NCAA");	)	
	)	
MARK EMMERT, individually and as President	)	
of the NCAA; and	)	
	)	
EDWARD RAY, individually and as former	)	
Chairman of the Executive Committee of the	)	
NCAA,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
THE PENNSYLVANIA STATE UNIVERSITY,	)	
	)	
Nominal Defendant.	)	

Pursuant to Local Rule 208.2(e), the undersigned counsel for The Pennsylvania State University hereby certifies that she conferred in good faith with counsel for Plaintiffs, King & Spalding LLP, and determined that the issues raised in Pepper Hamilton's Motion for Stay Pending Appeal and Protective Order and the University's joinder therein cannot be resolved without the Court's intervention.

Respectfully submitted,  
  
\_\_\_\_\_  
Donna M. Doblack (75394)  
ddoblack@reedsmith.com  
REED SMITH LLP  
225 Fifth Avenue

Pittsburgh, PA 15222  
(412) 288-3131  
(412) 288-3063 (fax)

*One of the Attorneys for  
The Pennsylvania State University*



**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this 22nd day of October, 2014, a true and correct copy of the foregoing JOINDER IN PEPPER HAMILTON LLP'S MOTION FOR STAY PENDING APPEAL AND FOR PROTECTIVE ORDER WITH RESPECT TO DOCUMENTS AND INFORMATION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR THE ATTORNEY WORK PRODUCT DOCTRINE was served upon the following counsel via United States mail, first class, postage prepaid:

Thomas J. Weber  
Goldberg Katzman, P.C.  
4250 Crums Mill Road, Suite 301  
P.O. Box 6991  
Harrisburg, PA 17112

Joseph Sedwick Sollers, III  
Patricia L. Maher  
L. Joseph Loveland  
Mark A. Jensen  
Ashley C. Parrish  
Samuel Evan Doran  
King & Spalding, LLP  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006

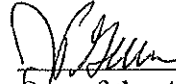
Paul V. Kelly  
John J. Comisso  
Jackson Lewis, PC  
75 Park Plaza  
Boston, MA 02116

*Counsel for Plaintiffs*

Everett C. Johnson, Jr.  
Brian Kowalski  
Sarah M. Gragert  
Katherine Schettig  
Latham & Watkins LLP  
555 Eleventh Street NW, Suite 1100  
Washington, DC 20004-1304

Thomas W. Scott  
Killian & Gephart, LLP  
218 Pine Street, P.O. Box 886  
Harrisburg, PA 17108-0886

*Counsel for NCAA, Mark Emmert  
and Edward Ray*



---

One of the Attorneys for  
The Pennsylvania State University